



Brian K. Cherry
Vice President
Regulation and Rates

Pacific Gas and Electric Company
77 Beale St., Mail Code B10C
P.O. Box 770000
San Francisco, CA 94177

Fax: 415-973-7226

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BY EMAIL

Fred Harris, Staff Counsel
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
E-mail: fnh@cpuc.ca.gov; jva@cpuc.ca.gov

Re: Comments of Pacific Gas and Electric Company and Southern California Edison Company on Draft Resolution L-436 Adopting New Regulations Regarding Public Access To Records Of The CPUC And Requests For Confidential Treatment Of Records

Dear Mr. Harris:

Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) hereby submit their joint comments on Draft Resolution L-436 (Draft Resolution), which proposes to replace General Order (GO) 66-C with a new GO 66-D that allows greater public access to the California Public Utilities Commission's (CPUC's or Commission's) records, including information submitted to the CPUC by the state's public utilities.

As a general matter, PG&E and SCE support the CPUC's efforts to re-evaluate its implementation of the California Public Records Act (CPRA). PG&E and SCE agree that GO 66-C, which implements the CPRA, is outdated and needs to be revised. It is evident that the CPUC's Legal Division has put considerable thought into the Draft Resolution. In particular, PG&E and SCE appreciate and support the Draft Resolution's proposal to preserve existing procedures, including those applicable to denials of requests for access to records (GO 66-D, p. 4, Section 1.4.1) and requests for confidential treatment (GO 66-D, p. 13, Section 3.1.1). PG&E and SCE also support the Draft Resolution's continued recognition of the various legal, statutory, and CPUC-approved privileges and protections, including those in "General Orders or other CPUC decision, order, or ruling that authorizes a document to be kept confidential." (GO 66-D, p. 6, Section 2.2.1.1.) The CPUC, public utilities, and stakeholders have successfully worked

within these existing procedures and protections, and there is no need for the CPUC to revisit or disrupt them now.

There is an inherent tension between the CPRA, which reflects a bias toward public disclosure of governmental records, and Public Utilities Code Section 583, which prevents the CPUC from disclosing utility information to the public “except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding.” The protections of Section 583 are both necessary and appropriate in light of the Commission’s broad authority to access the books and records of public utilities. *See, e.g.*, Pub. Util. Code §§ 313, 314, 581, 582. Unfortunately, some of the procedures proposed in the Draft Resolution would violate Section 583 by having the CPUC disclose public utility information to the public without the necessary actions by the full Commission or a Commissioner.

In these comments, PG&E and SCE offer modest modifications to the Draft Resolution to ensure that the CPUC provides greater public access to its records while at the same time conforming to the requirements of the law.

A. The CPUC’s Proposed Public Records Process Must Comply With Public Utilities Code Section 583

PG&E and SCE agree with the general intent of the Draft Resolution to create “clear and consistent rules for processing records requests, and requests for confidential treatment of records.” (Draft Resolution, p. 1.) However, PG&E and SCE disagree with those portions of the Draft Resolution and accompanying GO 66-D that in effect rewrite the requirements of Section 583.

Specifically, PG&E and SCE disagree with the Draft Resolution’s Conclusion of Law (COL) 42, which paraphrases Section 583 so that its essential emphasis is changed:

42. Cal. Pub. Util. Code §583 notes that the Cal. Pub. Util. Code specifically requires certain matters to be open to public inspection. Section 583 provides that information furnished by a public utility, subsidiary or affiliate of a public utility, or corporation which holds a controlling interest in a public utility, concerning such matters, may be open to the public or made public without a CPUC order, or action by the CPUC or a Commissioner in the course of a hearing or proceeding. [Draft Resolution, p. 22, COL 42, emphasis added.]

In fact, Section 583 states:

583. No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to

public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor. [Emphasis added.]

In other words, the phrase “except those matters specifically required to be open to public inspection by this part” serves as an exception to the general rule of Section 583, which requires a Commission order or a Commissioner action in the course of a proceeding to approve disclosure. Examples of such statutory exceptions are described in the Draft Resolution’s COL 45-47(citing Sections 324, 353.15(a), and 392.1(a)).

For similar reasons, PG&E and SCE disagree with the Draft Resolution’s COL 48, which states:

48. The CPUC has authority under Cal. Pub. Util. Code §§ 583 and 701 to adopt broadly applicable regulations regarding disclosure of records or information in the custody of the Commission that provide that the CPUC’s records are public, with limited exceptions for disclosure [as] prohibited by law or the record are otherwise subject to specified exemptions from mandatory disclosure. [Draft Resolution, p. 23, COL 48, emphasis added.]

Again, the general rule of Section 583 – as reflected in the plain language – requires an order of the full Commission, or action by the Commission or a Commissioner in the course of a hearing or proceeding, in order to make public utility information open to the public. The “limited exceptions” pertain to instances where such Commission action is not needed; not instances where such Commission action is needed. While Section 701 may give the CPUC discretionary authority to “do all things...necessary and convenient in the exercise” of its jurisdiction, such discretionary authority cannot conflict with the express limitations set forth elsewhere in the Public Utilities Code.

Given the express language of Section 583, PG&E and SCE recommend the Commission not adopt the following proposed change to the CPUC’s public records process:

- (1) Instead of permitting a company to identify documents filed with the Commission as confidential, in a manner that requires the CPUC to take explicit action to release the documents, the CPUC will treat documents as public unless the company can show why the documents are subject to a CPRA exemption or other provision of law prohibiting or limiting disclosure. [Draft Resolution, pp. 1-2.]¹

¹ For similar reasons, PG&E and SCE recommend against adoption of Section 3.1.2 (“Other Contexts”) of GO 66-D, which would delegate authority to the Industry Divisions to release confidential information based on their own determination that the utility’s “notice of confidential treatment is not warranted” pursuant to “a CPUC decision, order, or ruling.”

As stated above, Section 583 prohibits disclosure to the public of any public utility information – not just documents submitted as “confidential” – without first obtaining an order of the full Commission, or by the Commission or a Commissioner in the course of a hearing or proceeding, except in the limited circumstances set forth elsewhere in the Public Utilities Code. While PG&E and SCE agree with the Draft Resolution that the CPUC’s current practices tend to restrict public access to utility information in contravention of the spirit of the CPRA, PG&E and SCE disagree with the Draft Resolution’s conclusion that the CPUC has authority to release such information without taking some explicit action to do so. As discussed directly below, PG&E and SCE propose modifying the CPUC’s current practices to comply with both the requirements of Section 583 and the intent of the CPRA.

B. PG&E and SCE Propose Specific Revisions To The Draft Resolution And GO 66-D To Conform The CPUC’s Procedures To Section 583

To comply with Section 583’s requirements while minimizing the administrative burden on the CPUC, PG&E and SCE propose a procedure whereby the CPUC would issue a resolution at each business meeting providing the status of requests for confidential treatment received in a given period, and otherwise authorizing disclosure of public utility information submitted to the CPUC during that period. This resolution (referred to herein as the “Public Records Office Resolution”) would be similar to the ALJ Resolution on Preliminary Categorizations and Hearing Determinations for Recently Filed Formal Applications that currently appears as a regular item on the CPUC’s business meeting agendas.

The proposed Public Records Office Resolution provides a useful complement to the Draft Resolution’s requirement that the CPUC develop a comprehensive online index of records maintained by the CPUC, and an online database of requests received by the CPUC to treat documents as confidential and the CPUC’s decisions on the requests. (Draft Resolution, p. 2.)² In effect, the Public Records Office Resolution would serve as a regular update to the records index and confidentiality database.

As proposed in GO 66-D, requests for confidential treatment in formal proceedings would continue to be processed pursuant to existing rules. (GO 66-D, p. 13, Section 3.1.1.) Determinations made in formal proceedings regarding confidentiality would continue to extend to requests under the CPRA. For example, if an Administrative Law Judge (ALJ) grants confidential treatment to public utility information provided in a proceeding, such information would also be protected from public disclosure pursuant to the CPRA. The Public Records Office Resolution would provide a regular update of such confidentiality determinations.

² PG&E and SCE interpret the Draft Resolution to “grandfather” existing documents in the CPUC’s possession; that is, the online index and online database would memorialize documents previously submitted to the CPUC as well as those documents for which confidential treatment has been requested, but the CPUC will not now evaluate or otherwise re-visit those historic documents and requests.

For requests for confidential treatment in “Other Contexts,” GO 66-D provides that disputes about the confidentiality of utility information be resolved first by Industry Division and then, on request for review, by CPUC resolution. PG&E and SCE support this process with the following modifications:

1. If the Industry Division determines that the notice of confidential treatment is not warranted based on “a CPUC decision, order, or ruling mandating that the records or information be open to the public,” the CPUC should not allow public access while the request for review is pending.
2. If the Industry Division determines that a request for confidential treatment is unwarranted and the public utility does not request review, the information in question should nevertheless not be disclosed until the Industry Division’s determination is included in the regularly scheduled Public Records Office Resolution and approved by the full CPUC.

The Draft Resolution provides that the CPUC “will disclose completed safety-related investigation records on a routine basis, as opposed to requiring a vote of the Commission or an Administrative Law Judge Ruling.” (Draft Resolution, p. 2.) PG&E and SCE propose to clarify this statement to provide that the CPUC will disclose its safety-related investigation reports on a routine basis. Section 583 does not prohibit the CPUC from disclosing its own documents to the public without a CPUC order. However, the CPUC should not disclose any documents received from a public utility as part of an investigation without following the procedures applicable to all public utility documents. The fact that a public utility submits documents to the CPUC as part of an investigation is not grounds to treat that information any differently from information submitted in other contexts.

The Draft Resolution identifies numerous safety-related reports that utilities submit to various agencies and directs “Staff to develop a plan for creating an informative safety information portal” where such information may be “readily accessible to the public.” (Draft Resolution, p. 14.) The Draft Resolution affirms that the CPUC “will generally refrain from making available to the public...maps and schematic diagrams showing the location of specific utility regulator stations, valves, and similar facilities...” (Draft Resolution, p. 10.) PG&E and SCE support the creation of such a safety portal and the CPUC’s recognition of the importance of protecting certain information that could present national security risks, and requests that Staff be directed to work with the affected utilities to ensure that any confidential information contained in such reports is appropriately redacted or protected from public disclosure. To the extent Staff and the utilities are not able to agree on the need for or level of protection, the procedures applicable to disclosure of all public utility documents should apply.

Finally, PG&E and SCE request that the Commission convene workshops after the Draft Resolution is issued so that all stakeholders can have an opportunity to discuss

implementation of the new requirements under GO 66-D. One suggested topic of discussion at the workshops would be the creation of a streamlined process whereby the Assigned Administrative Law Judge in formal proceedings could provide “blanket” protections for certain types of information that may be disclosed during the discovery process. For example, in a complex proceeding such as a General Rate Case, where thousands of data responses are typically shared with the Division of Ratepayer Advocates, it would be unduly burdensome for the utility to fill out a request for confidentiality form for each data response and for the Industry Division or ALJ to rule on each request.

In closing, PG&E and SCE appreciate the significant thought reflected in the Draft Resolution and the proposed GO 66-D, and respectfully request that the CPUC incorporate PG&E’s and SCE’s comments and recommendations in the final resolution and General Order.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian K. Cherry". The signature is fluid and cursive, with the first name being the most prominent.

Brian K. Cherry
Vice President
On Behalf of Pacific Gas and Electric Company
And Southern California Edison Company